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SUBJECT: EL SALVADOR: PROGRESS WITH LABOR MINISTRY IN KEY
CASES

1. (SBU) SUMMARY: In the span of less than a month, El Salvador's Ministry of Labor has made moves to establish the official status of the airport maintenance workers union (SITEVMAIES) and the telecommunications workers union (SITCOM). The former case had proven controversial and attracted international attention, while the latter had languished in a state of limbo for three and a half years. The resolution of the cases demonstrates an atmosphere of greater openness and flexibility on the part of Minister Espinal compared to his predecessor, although Embassy pressure and independent legal decisions have often proved useful in breaking bureaucratic logjams and getting the Ministry to "do the right thing". El Salvador also stands poised to ratify ILO Conventions 87 and 98; further developments relating to ratification will be reported septel. END SUMMARY.

BACKGROUND: AIRPORT MAINTENANCE WORKERS UNION

2. (SBU) Fifty-one Comalapa International Airport maintenance workers representing 15 companies met May 13 to form a union, and on May 17 submitted their petition for union status to the Ministry of Labor. The Ministry on May 23 requested additional information regarding the workers' job responsibilities and the companies for which they worked; this information was duly provided the same week. On June 9, the Ministry denied the union's legal status ("personeria juridica") on the basis of several legal technicalities, including the requirement that every company with workers belonging to a union have at least 2--but no more than 25--workers represented; the Ministry also found that several of the workers' employers weren't properly-registered and incorporated companies. On June 12, the workers filed an appeal asking that the Ministry review its decision. The case attracted attention internationally, including that of the AFL-CIO.

3. (U) Labatt and Political Section FSN reviewed the Ministry's decision, and concluded that it resulted from an improper interpretation of Commercial Code Article 554 and Labor Code Article 209. Labatt met with Minister Espinal June 29 to discuss the SITEVMAIES case; Espinal outlined that the Ministry's refusal of the union's status had occurred while he was away at ILO meetings in Geneva, but that now that he had returned, he would personally review the facts of the case. At the meeting's close, Labatt asked whether the Minister would be open to the idea of our preparing a chronological summary of the key facts of the case, annotated with our understanding of what would be the relevant points that would be applicable under Salvadoran law. The Minister readily agreed to the idea, and the Embassy submitted such a summary to Minister Espinal on July 14 (although the Minister himself did not review this document until the following Monday, July 17). A week later on July 24, the Ministry

reversed itself and granted the union's legal status.

BACKGROUND: TELECOMMUNICATIONS WORKERS UNION

14. (U) In March 2003, a group of telecommunications workers met to form a union (SITCOM), and submitted its petition for legal status to the Ministry of Labor. In May 2003, then-Minister Nieto denied the union's petition, asserting that radio station workers were not part of the telecommunications industry, that at least two of the petitioning workers were actually management (and therefore ineligible for membership), and that without the disqualified workers, the union lacked the legally-mandated minimum of 35 workers. In June, SITCOM appealed the Ministry's decision to the Administrative Dispute Chamber of the Supreme Court. During 2003, SITCOM President Angel Moreno was discharged from his job, SITCOM Secretary Jose Ayala was locked out of the workplace, and five SITCOM-affiliated workers were demoted to lower-level positions. Labatt met with union officers on numerous occasions to discuss the status of the case.

15. (SBU) In March 2004 the Supreme Court asked the Ministry of Labor to submit documents outlining the basis on which the Ministry had denied the union's status. On July 29, 2006, the Supreme Court's Administrative Dispute Chamber rejected the Labor Ministry's 2003 findings, but requested that SITCOM members resubmit documents and employment records as evidence in support of their petition to form a union. Following the Supreme Court's decision, the Ministry has moved quickly to review the union's documentation, and Minister Espinal personally assured Labatt August 18 that, judging from his preliminary reexamination of the case, the Ministry would almost certainly reverse his predecessor's decision, and

SITCOM's official registration would be in order very soon.

16. (SBU) COMMENT: These developments regarding SITEVMAIES and SITCOM are especially encouraging when viewed together with the Ministry's granting of union status to Acajutla port workers (STIPES) last July, and the Saca administration's willingness to undertake the legal reforms necessary for ratification of ILO Conventions 87 and 98 regarding freedom of association and the right to collective bargaining. Although the contrast between Minister Espinal and his predecessor is striking, it is nonetheless apparent that unionization in certain business sectors sometimes pits the Minister against influential private-sector backers of the ruling ARENA party. It is likely that Espinal's ever-welcoming attitude toward Embassy intervention in such cases is due to the leverage--and cover--it provides him within the Saca administration. END COMMENT.
Barclay